IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 264 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BHARATKUMAR RAMANLAL PANCHAL

Appearance:

MR AKIL KURESHI for M/s. MANISH R BHATT & Co.
for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred following question of law for our opinion in respect of Assessment Years 1978-79 & 1979-80 :-

"Whether, on the facts and circumstances of the case, the share income from M/s. Karsandas Bechardas & Sons was rightly deleted from the total income of the assessee who was assessed in the status of an individual ?"

2. FACTS :

The assessee is an individual. He was a member of an HUF known as 'Ramanlal Karsandas' which was a partner in the firm of M/s. Karsandas Bechardas & Sons through its Karta. Similarly, Parshottamdas K. Panchal was a member of a HUF known as "Kantilal Karshandas. Partial partition in those two families had taken place in the year relevant to the assessment years 1971-72 & 1970-71 respectively, by which amounts standing in the name of the respective HUF in the books of M/s. Karshandas Bechardas & Sons were partitioned amongst the members of respective HUF. Since at the time of partition both Bharatkumar i.e. the assessee in this case and Parshottamdas were minor, their share income from the said firm was included in the hands of respective fathers as per the provisions of section 64 of the Income-tax Act, 1961. After they attained majority, their share income from the said firm was assessed in their respective hands in the status of individual. The assessee Bharatkumar got married subsequently. In his return of income filed in the status of individual, the assessee claimed that his share on the partition of the family should be treated as income belonging to his smaller HUF. Similar claim was also advanced by Parshottamdas in his income-tax returns.

3. In the case of Parshottamdas K. Panchal in Income Tax Reference No. 160/85, we have held that the share income from M/s. Karshandas Bechardas & Sons was rightly deleted from the total income of the assessee who was assessed in the status of an individual because the income should have been assessed as belonging to HUF of the assessee Parshottamdas. In view of the decision in Income Tax Reference No. 160/85, we are of the opinion that the share income from M/s. Karshandas Bechardas & Sons was rightly deleted from the total income of Bharatkumar, who is assessee in the present case and who is assessed in the status of individual. The Reference is, therefore, answered in the affirmative i.e. in

favour of the assessee and against the Revenue.

The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)